IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8768 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

VASANTBHAI MOHANLAL KHAKHAR

Appearance:

1. Special Civil Application No. 8768 of 2002

MRS VASAVDATTA BHATT for Petitioner No. 1

MR KISHOR M PAUL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 13/02/2004

ORAL JUDGEMENT

The petitioner - Gujarat State Road Transport Corporation has approached this Court under Article 227 of the Constitution of India, to challenge the award made

by the Industrial Tribunal, Rajkot in Reference (I.T.R.) No. 5 of 1994 dated 27th September, 2001, whereby, the Tribunal has set aside the punishment of stoppage of annual increment with future effect imposed upon the respondent.

2. It appears from the record of this petition that the respondent who at the relevant time was working as driver with the petitioner, on 10th June, 1989, was driving bus on route between Ahmedabad to Dwarka. It was a Semi-luxury bus bearing registration no. GRU 9363. It was a night time and while driving the bus he had caused accident resulting into damage to the extent of Rs.10,000=00 to the bus owned by the petitioner and also resulting into injuries to several persons.

2.1. For the aforesaid act of misconduct, the petitioner after holding inquiry found him guilty of committing the said misconduct and thought it fit to impose punishment of stoppage of annual increment with future effect and also to recover from his salary an amount of Rs.16,870=00 towards the damage caused to the bus. Against the said decision, he preferred an appeal before the appellate authority which was also turned down.

2.2. The respondent raised dispute, which ultimately came to be referred to the Industrial Tribunal No. 1 at Rajkot, by way of the aforesaid Reference. After considering the material produced before it, the Tribunal came to the conclusion that the respondent could not have been saddled with two punishments namely first to recover the amount towards damage caused to the bus and secondly stoppage of annual increment with future effect. It, therefore, partly allowed the Reference and quashed the punishment with regard to stoppage of annual increment with future effect. However, it retained the order with regard to recovery of Rs.16,780=00. It is this decision which is now under challenge in this petition.

3. Mrs. Vasavadatta Bhatt learned advocate appearing for the petitioner has contended that when the disciplinary authority had imposed punishment which had been confirmed by the appellate authority, the Tribunal was not justified in interfering with same. She has further contended that the approach of the Tribunal is erroneous because considering the facts and circumstances of the case, the order imposing punishment of stoppage of annual increment with future effect was just and proper.

3.1. As against that Mr. Kishor Paul learned advocate

appearing for the respondent has supported the judgment of the Tribunal. He has further submitted that the respondent was acquitted in the criminal case which had been filed against him in respect of the present accident. He has further submitted that the approach of the Tribunal was proper because a person cannot be penalized twice for the same act. He has also submitted that considering the fact that it was night time, and there was failure of the break of the concerned vehicle, the accident had taken place and, therefore there was no fault of the respondent.

4. Having carefully gone through the record of the petition and in particular the judgment of the Tribunal, it is clear that the respondent had caused accident while he was driving the bus between Ahmedabad to Dwarka. It was night time and as a result of this accident, the bus was damaged to a considerable extent. Several persons had received injuries. Considering the fact that the respondent was driving a public transport vehicle carrying number of passengers in it, it was his prime duty to see that all those persons were safely reached to their destination. Instead, it appears that he was driving his vehicle negligently and in rash manner. It is true that he had been acquitted by the learned Magistrate in criminal case. However, the said acquittal as can be seen from the judgment of the Tribunal is not a clean acquittal but benefit of doubt has been given to him. The Tribunal has also found that the defence regarding failure of the break taken by the respondent, was not true because, the bus was duly examined by the mechanic and it was found to be in order. When these are the circumstances on record, it is not difficult to hold that the respondent was negligent and rash while driving his vehicle. It may be noted here that while considering the quantum of punishment, the disciplinary authority had taken into consideration the past record of the respondent. The same has also been produced alongwith this petition at page 18. Item no. 3 thereof, shows that due to negligent and rash driving of the petitioner, death of cyclist was caused in the month of February, 1985 and for which he was punished with the order of stoppage of increments for two years. Not only that, on two other occasions, he had caused accidents which can be seen from the default card which is produced at page 20. If this is the manner in which the respondent is driving the vehicle, by which number of persons travel daily, in my opinion, even by the disciplinary authority has let him off very lightly. When the disciplinary authority had taken into consideration the past record of the respondent, it ought to have taken into consideration the

totality of the effect thereof, which clearly shows that the respondent was incorrigible and such person could not have been retained in service any longer. However, it has chosen to impose only punishment of stoppage of annual increment with future effect. Be that as it may, even that order has been confirmed by the appellate authority. It was, therefore, not open for the Tribunal while exercising power under Section 11 (A) of the Industrial Disputes Act, 1947 to interfere with the said order of punishment on the ground that it amounted to imposition of two punishments for the same act. The approach of the Tribunal is totally erroneous because the respondent is called upon to make good the loss that was suffered by the petitioner on account of his negligent driving. Such order cannot be equated with the order imposing punishment. The imposition of the punishment by way of stoppage of increment had nothing to do with reimbursement of the damage suffered by the petitioner. This petition therefore has much substance and it is required to be accepted. The judgment and order of Tribunal rendered in Reference (I.T.R.) No. 5 of 1994 dated 27th September, 2001 are hereby quashed and set aside. The petition is allowed. Rule is made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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